

January 18, 2018

VIA ECF

Hon. Jesse M. Furman
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Empire Merchants, LLC v. Merinoff, et al.* No. 16-CV-9590(JMF)

Dear Judge Furman:

Pursuant to the Court's January 4, 2018 Order (ECF 75) (the "**January 4 Order**"), Plaintiff Empire Merchants, LLC ("**Empire**") and Defendants Charles Merinoff and Gregory Baird (together, "**Defendants**"), respectfully submit this joint letter after having met and conferred via teleconference.

In the January 4 Order, the Court ruled that Defendants are entitled to advancement "of their fees and expenses relating to litigation of Empire's pre-amendment claims." (ECF 75 at 6.) In accordance with the January 4 Order, the parties have conferred in good faith to discuss the amounts to which Defendants are entitled in connection with pre-amendment advancement. The parties have been unable to reach any agreement regarding such amounts. However, the parties have agreed upon a proposed mechanism to resolve their dispute. Specifically, the parties propose that they brief Defendants' application for pre-amendment advancement in parallel to Empire's fee application for its damages on its breach of contract claim.

In the Court's November 16 Order, the Court ruled that Empire's fee application for its award of contract damages shall be filed "**within thirty days** of the earlier of (1) Defendants' deadline to file their motion for reconsideration (if Defendants elect not to file such a motion) or (2) the Court's ruling on such a motion (if the Court denies it)" and "[a]ny opposition shall be filed **within two weeks** of Plaintiff's application; [and] any reply shall be filed **within one week** of any opposition." (ECF 64 at 2 (emphasis in original).) Because the Court denied Defendants' motion for reconsideration in the January 4 Order, Empire's fee application is due on February 5, 2018.

Accordingly, the parties propose the following briefing schedule:

- **February 5, 2018:** Deadline for both parties' fee application;
- **February 20, 2018:** Deadline for both oppositions;¹ and
- **February 27, 2018:** Deadline for both replies.

Additionally, the parties note that the Court's November 16 Order requires them to meet and confer concerning Empire's fee application prior to February 5, 2018. (*See* ECF 64 at 2 ("Before filing any fee application, however, the parties shall meet and confer in an effort to agree upon the fees and costs and avoid the need for further litigation on that front (or at least to narrow any disagreements)."). This has not yet occurred. But the parties intend to comply with the November 16 Order and have agreed to meet and confer on this subject prior to Empire's fee application submission.

Accordingly, the parties propose that they keep the Court updated and file a further joint letter prior to February 5, 2018 in the event that they are able to narrow any areas of dispute.

The Parties thank the Court for its consideration.

Respectfully submitted,

/s/ Randy M. Mastro
Randy M. Mastro

/s/ Sean F. O'Shea
Sean F. O'Shea

¹ Monday, February 19, 2018, is a federal court holiday.